IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

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WRIT PETITION NO : 6035 of 2005

Between:

1 M/s. Bhoorathnom Construction Company Pvt Ltd., 7-3-720, Rastrapathi Road, Secunderabd-500 003,
rep. by its M.D. Mr AL Raja Shankar, S/o. Late AK. Lakshmipathi.

2 M/s. R.M Mohite & Co., Shivaparvathi, 17E, Nagala Park
Kolhapur Maharastra rep. by its GP A Holder Mr AL Raja Shankar,
S/o. Late AK. Lakshmipathi.

3 M/s. WPIL Limited, 22 Ferray Fund Road, Panihanti, West Bengal,
rep. by its GP A Holder Mr AL Raja Shankar, S/o. Late AK. Lakshmipathi.

..... PETITIONERS

AND

1 the Govt of a.P., rep. by its Principal Secretary, Irrigation & CAD (PW), Dept., Secretariat Hyderabad.
2 the Superintending Engineer, Irrigation & CAD (PW), G.N.S.S.Circle, Cuddapah, A.P.
3 M/s. Kirloskar Brothers Limited, Jade Arcade, 4th Floor, Near Paradise Circle, M.G.Road, Secunderabad-500 003.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ of Mandamus or any other appropriate writ or Order or direction declaring the action on the part of the respondents for non opening of the tender schedules submitted by the petitioners in tender notice number: emprocurement/2/004-05 dt. 03.01.2005, as arbitrary, illegal, unjust and unsustainable and consequently direct the respondents to open the tender schedules submitted by the petitioners, and pass such other order or orders.

Counsel for the Petitioner: MR.K.SIVA KUMAR REDDY

Counsel for the Respondents 1 AND 2: GP FOR IRRIGATION & COMM AREA DEV.

Counsel for the Respondent No. 3: Mr. K. Raghavacharylu.

The Court at the stage of admission made the following :

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ORAL ORDER:.

Heard both sides and at their request this Writ Petition is taken up for disposal, at the stage of admission.

This Writ Petition is filed for issuance of a Writ, particularly one in the nature of Mandamus, declaring the inaction on the part of the respondents for non opening of the tender schedules submitted by the petitioners in tender notice number eprocurement/2/2004-05, dated 3.1.2005, as arbitrary and illegal.

The learned Government Pleader submits that the tender process consists of two phases and at the first phase, which is otherwise called as technical bid, the authorities would consider whether the participants in the tender satisfied all the criterion or not and if it is found such a tenderer is eligible, then he will be passed on to the second phase which is otherwise called as price bid stage.

In the instant case, it appears that out of total four tenderers participated, three tenderers were found to be ineligible at the technical bid stage. The petitioner is one among those three. The only tenderer remained and passed on to the second stage is the third respondent. The work order has also not been given so far.

It is the contention of the counsel appearing for the petitioner that this is only to see that the tender goes in favour of the third respondent, by the subdued act of eliminating the petitioner and two others. What are the actual reasons to eliminate from the eligibility criterion of three tenderers are not very clear, but it is clear to the extent that the competent authority did not satisfy himself that those three tenderers got over eligibility criterion to reach the second stage.

Only when the second stage is also over, then tender would be granted in favour of the successful tenderer, and it can be said that the contract is concluded. Upon such conclusion, any aggrieved party can challenge the entire process in a competent civil court seeking damages.

This court cannot express or superimpose its view over the eligibility of a particular tenderer and it is for the authorities concerned to examine in detail about

the eligibility criterion of the participants in the tender process.

Since it has been informed that the work order had not been given so far, but however, instructions were given to the third respondent to proceed with the work in view of the urgency, it cannot be said that the contract is concluded in the eye of law. But, still, there is an apparent conclusion of the contract.

This action, which has allegedly caused loss to the petitioner, can be corrected by way of issuing a direction to the first respondent to consider representations of the petitioner dated 28.3.2005 and 4.4.2005 on or before 13.4.2005. It is made clear that any work done by the third respondent or instructions given by the official respondents to the third respondent would be subject to the result of the Writ Petition. It is however, made clear that the third respondent shall not claim any equities, in case the representations are considered in favour of the petitioner, for any reason.

The second respondent, however, expressed regrets for the inconvenience caused to the petitioner, his counsel, to the Advocate General and the Court as well, which are accepted, particularly in view of his voluntary offer of contributing a sum of Rs. 40,000/- (Rupees Fourty Thousand Only) from his personal fund, for the treatment of children ailing from heart decease in any recognized hospital, particularly Care Foundation either at Banjara Hills or at Nampally. With appreciation of his gesture, all further proceedings are dropped. After paying the amount, receipt of which would be presented before this court. No costs.

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D.S.R. VARMA, J

DATED: 07.04.2005

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Note: Furnish copy by tomorrow.

B/o ka

To

1 the Govt of a.P., rep. by its Principal Secrretary, Irrigation & CAD (PW), Dept., Secretariat Hyderabad.
2 the Superintending Engineer, Irrigation & CAD (PW), G.N.S.S.Circle, Cuddapah, A.P.
3 M/s. Kirloskar Brothers Limited, Jade Arcade, 4th Floor, Near Paradise Circle, M.G.Road, Secunderabad-500 003.

4. One Copy to the Advocate General, High Court of A.P., Hyderabad.

5. Two CCs G.P. for Irrigation, High Court of A.P., Hyderabad (OUT)

6. Two CD copies.